

**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:

FIRST SOURCE FINANCIAL USA, and  
JOSEPH N. GIULIANO, President,

Respondents.

NO. C-03-217-03-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO REVOKE LICENSE,  
IMPOSE MONETARY PENALTY, PROHIBIT  
FROM PARTICIPATION IN THE INDUSTRY,  
AND COLLECT INVESTIGATION FEE

**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of September 18, 2003, the Director institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents:**

A. **First Source Financial USA** ("Respondent First Source") was licensed by the Department of Financial Institutions of the State of Washington ("Department") to conduct business as a Mortgage Broker on July 17, 2002. Respondent First Source surrendered its Mortgage Broker license on September 18, 2003.

B. **Joseph N. Giuliano** ("Respondent Giuliano"), was President of Respondent First Source during the entire time Respondent First Source was licensed to conduct business as a Mortgage Broker in the State of Washington.

**1.2 Designated Broker:** Don Edward McKinnon ("McKinnon") was approved as the Designated Broker for First Source effective July 17, 2002, the date First Source was licensed by the Department. On September

1 13, 2002, the Department received a faxed notice stating that, effective September 15, 2002, McKinnon  
2 officially resigned from his position as President of Operations for First Source, as well as withdrawing his  
3 Designated Broker status. Respondent First Source did not submit a Designated Broker application to replace  
4 McKinnon. Respondent did not have a Designated Broker from September 15, 2002, until it surrendered its  
5 license on September 18, 2003.

6 **1.3 Continuing Education Requirement:** A certificate of satisfactory completion of an approved  
7 continuing education course was due to the Department from Respondent First Source no later than the last  
8 business day of July 2003, for the year then ended. On July 21, 2003, Respondent First Source provided the  
9 Department with a certificate showing that McKinnon had completed the required continuing education course.  
10 The date on the certificate was July 17, 2003. Respondent First Source has provided no other certificate of  
11 completion for an approved continuing education course. McKinnon states that he did not take the continuing  
12 education course indicated on the certificate and did not send or cause the certificate to be sent to the  
13 Department.

14 **1.4 Negligently Making False Statements:** Along with the certificate showing that McKinnon had  
15 completed the required continuing education course, Respondent First Source also submitted a Notice of  
16 Mortgage Broker License Annual Assessment and Continuing Education Requirement ("Notice"). The Notice  
17 is dated July 18, 2003. The signature on the Notice was "Don E", with a line after the E, which is the form of  
18 signature used by McKinnon. McKinnon states that he had not worked for Respondent First Choice for nine  
19 months prior to the date on the Notice and that he did not sign, send or cause the Notice to be sent to the  
20 Department.

## 21 **II. GROUNDS FOR ENTRY OF ORDER**

22 **2.1 Continuing Education Requirement:** Based on the Factual Allegations set forth in Section I above,  
23 Respondent First Source is in apparent violation of RCW 19.146.215 and WAC 208-660-042 for failing to have  
24 a principal or a Designated Broker complete the annual continuing education requirement and file a certificate  
25 of satisfactory completion.

1 **2.2 Negligently Making False Statement:** Based on the Factual Allegations set forth in Section I above,  
2 Respondent First Source is in apparent violation of RCW 19.146.0201(8) when it submitted a false Notice and  
3 false certificate of completion of the continuing education requirement.

4 **2.3 Authority to Revoke License:** Pursuant to RCW 19.146.220(2)(b)(iv), and WAC 208-660-160(5), (7),  
5 (14), and (19), the Director may revoke a license if a licensee violates any provision of RCW 19.146.0201(1)  
6 through (9), fails to demonstrate character and general fitness such as to warrant a belief that the business will  
7 be operated honestly, violates the provisions of the Mortgage Broker Practices Act, negligently makes any false  
8 statement or knowingly and willfully makes any omission of material fact in connection with any reports filed  
9 by a mortgage broker, performs an act of misrepresentation in any aspect of the conduct of the mortgage broker  
10 business, or fails to provide a required certificate of satisfactory completion of an approved continuing  
11 education course.

12 **2.4 Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c) and WAC 208-660-165, the Director  
13 may impose fines on a licensee for any violation of RCW 19.146.0201(1) through (9).

14 **2.5 Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(i), the Director may  
15 prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal,  
16 employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act  
17 for any violation of RCW 19.146.0201(1) through (9).

18 **2.6 Authority to Charge Investigation Fee:** Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and  
19 WAC 208-660-061, upon completion of any investigation of the books and records of a licensee, the Department  
20 will furnish to the licensee a billing to cover the cost of the investigation. The investigation charge will be  
21 calculated at the rate of forty-seven dollars and seventy-eight cents (\$47.78) per hour that each staff person devoted  
22 to the investigation.

### 23 **III. NOTICE OF INTENTION TO ENTER ORDER**

24 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth  
25 in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under

1 RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER  
2 that:

- 3 3.1 Respondent First Source Financial USA's license to conduct the business of a Mortgage Broker be  
revoked;
- 4 3.2 Respondents jointly and severally pay a fine of \$4,500 for failing to obtain the required continuing  
5 education and for making a false statement to the Department, calculated at \$75.00 for each (2)  
statutory violation per day, for 30 days;
- 6 3.3 Respondent Joseph N. Giuliano be prohibited from participation in the conduct of the affairs of any  
7 licensed mortgage broker, in any manner, for a period of five (5) years;
- 8 3.4 Respondents jointly and severally pay an examination fee in the amount of \$286.68 calculated at  
\$47.78 per hour for six (6) staff hours devoted to the investigation; and
- 9 3.5 Respondents maintain records in compliance with the Act and provide the Department with the  
10 location of the books, records and other information relating to Respondent First Source Financial  
USA's mortgage broker business, and the name, address and telephone number of the individual  
responsible for maintenance of such records in compliance with the Act.

#### 11 IV. AUTHORITY AND PROCEDURE

12 This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Monetary  
13 Penalty, Prohibit from Participation in the Industry, and Collect Investigation Fee is entered pursuant to the  
14 provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to  
15 the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written  
16 request for a hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing  
17 Accompanying this Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose  
18 Monetary Penalty, Prohibit from Participation in the Industry, and Collect Investigation Fee.

19 Dated this 11th day of December, 2003.

20 /S/

21 CHUCK CROSS

22 Acting Director and Enforcement Chief  
23 Division of Consumer Services  
24 Department of Financial Institutions

**RCW 19.146.0201 Loan originator, mortgage broker – Prohibitions – Requirements.** It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:

....

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

....

[1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

**Severability – 1997 c 106:** See note following RCW 19.146.010

**Adoption of rules – 1993 c 468:** "The director shall take steps and adopt rules necessary to implement the sections of this act by their effective dates." [1993 c 468 § 22.]

**Severability – 1993 c 468:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 468 § 23.]

#### **RCW 19.146.215 Continuing education -- Rules.**

The designated broker of every licensee shall complete an annual continuing education requirement, which the director shall define by rule.

[1997 c 106 § 11; 1994 c 33 § 11.]

#### **RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.**

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

**RCW 19.146.221 Action by director -- Hearing -- Sanction.**

The director may, at his or her discretion and as provided for in \*RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

[1994 c 33 § 13.]

**RCW 19.146.223 Director -- Administration and interpretation.**

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

[1994 c 33 § 2.]

**RCW 19.146.228 Fees -- Rules -- Exception.**

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; . . .

[2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

**RCW 19.146.230 Administrative procedure act application.**

The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

[1994 c 33 § 16; 1993 c 468 § 10.]

**RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.**

For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons.

The director or designated person may direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and

1 may direct or order such person to produce books, accounts, records, files, and any other documents the director or  
2 designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and  
3 testify, or does not produce the requested books, records, files, or other documents within the time period established in the  
4 directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling  
5 production of books, records, files, or other documents. No person subject to examination or investigation under this  
6 chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other  
7 information.

8 Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or  
9 places of business to conduct a compliance examination. The director may examine, either personally or by designee, a  
10 sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and  
11 undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter.  
12 For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have  
13 been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the  
14 director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been  
15 taken or to investigate a complaint.

16 [1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

**WAC 208-660-042 Continuing education requirement.**

(1) The principal or designated broker of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later than the last business day of January 1996.)

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-042, filed 6/21/95, effective 7/22/95.]

**WAC 208-660-060 Department's fees and assessments.**

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200, 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

**WAC 208-660-061 Fee increase.**

The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200, 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.]

**WAC 208-660-160 License application denial or condition; license suspension or revocation.** The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

(5) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the Mortgage Broker Practices Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction issued pursuant to the Mortgage Broker Practices Act or the



Consumer Protection Act; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a substantial history of unpaid debts;

...

(7) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

...

(14) Has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession;

... or

(19) Has failed to provide a required certificate of satisfactory completion of an approved continuing education course.

[Statutory Authority: [RCW 43.320.010](#), [19.146.223](#). 01-01-044, § 208-660-160, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-160, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091, § 50-60-160, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-160, filed 1/7/94, effective 2/7/94.]

**WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act.**

Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.

[96-04-028, recodified as § 208-660-165, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-165, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-165, filed 11/8/94, effective 12/9/94.]